render should be taken without the sublessee's consent. He is at least entrenched in his possession beyond the power of the mesne tenant and the landlord to dislodge him. It should be noted that the principal case merely decides that no action for use and occupation lies,—it does not lay the ghost of the dictum in Bailey v. Richardson, and it is possible, though we believe hardly probable, that the courts may in the future decline to enforce the sublease on behalf of the landlord against the subtenant. O. K. M.

Negligence: Independent Proximate Cause.—In the case of Schwartz v. California Gas & Electric Company.[1] plaintiff sued defendant for an injury to his horse caused by its stepping on an insulator which the evidence tended to show was left on the plaintiff's premises by an employee of the defendant some months before while engaged in doing reconstruction work on defendant's pole. The evidence seemed to show that the insulator must have been dropped at a point some distance from where it was when the horse was injured. The Supreme Court holds that the refusal to give following instructions was error: "You cannot find for the plaintiff unless you find that (1) plaintiff's horse was injured by the insulator, the property of the defendants, and (2) that the employees of the defendant negligently placed said insulator on the premises where it is claimed said horse was injured, and at the point where said evidence shows said horse was in fact injured."

In support of this decision, the court says, "while there was no direct evidence that any third party moved said insulator, circumstances do appear from which a rational inference may be drawn to that effect and therefore it was a proper question to submit to the jury. . . . We are of the opinion that the requested instruction was not an instruction as to the facts, but that it correctly stated the law in view of the testimony." It will be well in cases of this nature to remember this language of the court, "we are of the opinion that the requested instruction correctly stated the law in view of the testimony," for it is these words which justify the court in approving the requested instruction. Ordinarily such an instruction would prejudice the case and take from the jury any consideration as to what was the proximate cause of the injury.

Whether or not the casual connection between the original negligence and the injury was broken in a particular case is often a difficult question of fact which can best be determined by the common experience of mankind. Consequently, such matters should be left to the jury. If they find that the injury complained of in any case was a natural and probable consequence of the original negligence, then according to the present tendency of the decisions in most American jurisdictions, as well as the latest English decisions, the original negligent party is responsible for the injury regardless of the number of

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[1] 125 Pac. 1044, Aug. 3, 1912.

events or agencies that have intervened; for it is intervening efficient causes and not intervening agencies that defeat liability for the original negligence[2] Such would certainly be the result in those jurisdictions that follow what may be called the "hindsight" rule.[3] But even in the more conservative jurisdictions that follow the "foresight" rule, the defendant would not be excused from liability merely by such acts of a third party as a man of ordinary prudence under like or similar circumstances might reasonably have foreseen.[4]

The California court in the case of Merrill v. Los Angeles Gas & Electric Co.[5] has used this strong language: "The proximate causation is not always arrested by the intervention of an independent concurring cause, whether that independent concurring cause may be classified as act of God, or the wrongful act of a third person." It is believed that the better attitude is that taken by the court in the Merrill case, where the lower court was sustained in submitting to the jury the broad question as to what was the proximate cause of the injury. T. J. L.

Public Service Corporations: Certificate of Public Necessity and Convenience—The Great Western Power Co. applied to the Railroad Commission of California, under § 50 of the Public Utilities Act for a certificate of public convenience and necessity for permission to exercise franchises granted it in the counties of Solano, Napa, Sonoma and Marin.[1] The application was answered by the Pacific Gas and Electric Co., which already served to some extent most of the territory applied for, and by various local companies. The Commission denied the application, without prejudice to a subsequent application, with respect to the greater part of the territory served by the local companies and granted it as to all the territory served by the Pacific Gas & Electric Co., except Marin county. As to this last exception our Commission followed the rule adopted by the eastern commissions in holding that "when territory is now served by a public utility which opposes the application, the burden is upon the applicant to show that the present or future public convenience and necessity require, or will require, the granting of the application."[2]

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[2] 29 Cyc. 499; Englehart v. Farrant & Co., L. R. 1897, 1 Q. B. D. 240 (1896) Smith v. London & Southwestern Railway Co., L. R. 6. C. P. 14 (1870); Wiley v. West Jersey Railway Co., 44 N. J. Law 247 (1882); Olson v. Gill Home Inv. Co., 58 Wash. 151; 108 Pac. 140 (1910); Pastene v. Adams, 49 Cal. 87 (1874); Merrill v. Los Angeles Gas & Electric Co., 158 Cal. 499; 111 Pac. 534 (1910).

[3] Rogers v. Mo. Pac. Ry. Co., 75 Kans. 222 (1907).

[4] Lane v. Atlantic Works, 111 Mass. 136 (1872); Seale v. Gulf C. & S. F. Ry. Co., 65 Tex. 248; 57 Am. Rep. 602 (1886).

[5] 158 Cal. 499; 111 Pac. 534 (1910).

[1] Pacific Gas & Electric Co. v. Great Western Power Co., decided by Railroad Commission of California, June 18, 1912.